

VS.

Ronald D. Kirstien, et al

Civil No. L-01-103

Court's Exhibits

CASE NO. L-01-103

IDENTIFICATION: May 6, 2004

ADMITTED: May 6, 2004

COURT'S QUESTIONS

1. Before the outside investors became involved, how were the Plaintiffs' businesses structured? Who owned them? What did the businesses do?
2. What were the business problems that prompted Plaintiffs to seek outside investors?
3. Does Mr. Kirstien and Mr. Rothstein have a track record of investing in troubled companies, especially food companies?
4. Were the parties represented by counsel during the reorganization of Plaintiffs' businesses? If so, by whom?
5. Describe the form of the reorganization. Did Mr. Habeck invest in the new company? Who were on the Board of Directors? Are there documents setting out the terms under which the reorganization would do business?
6. What did Mr. Habeck do that harmed Plaintiffs? What did Mr. Kirstien and Mr. Rothstein do, beyond "ratifying" Mr. Habeck's actions that harmed Plaintiffs? Was the conduct in violation of any contracts? When did the alleged conduct occur? When did Plaintiffs first become aware of this alleged conduct?
7. Plaintiffs allege in Count II (unfair competition and misappropriation) that Defendants misappropriated company assets and left Plaintiffs with unpaid debts and guarantees. What are the unpaid debts? Why were these debts not resolved during the bankruptcy proceedings?
8. Is the Chef Garcia, Inc. still in existence or in operation? Did Defendants end up with anything valuable? Did Defendants make or lose money?
9. Plaintiffs' opposition brief from pages 9-15 quotes their answer to Mr. Habeck's interrogatory (not numbered). Plaintiffs state that on June 17, 1997, Plaintiffs stated that they realized that there was a "cover-up by the Defendants." Should the statute of limitations begin to run on this date? [Suit was filed on January 12, 2001.]
10. In the same interrogatory, Plaintiffs explain that Defendants gave JP Food Service deep discounts on current sales based on inflated projected sales. Is there any evidence that Defendants were in cahoots with JP Food Service or any other customer?
11. Should the action have been brought as a shareholder derivative lawsuit?
12. Do Plaintiffs have standing to bring the instant lawsuit individually?

13. Why should have been brought against Chef Garcia, Inc. rather than Defendants as individuals?
14. Why is the suit is time-barred?
15. Describe the bankruptcy court proceedings. Does the doctrine of *res judicata* bars Count I because the issue was litigated in bankruptcy court.